

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

---

PARIS DAJON ALLEN,

Case No. 15-CV-1859 (MJD/JJK)

Petitioner,

v.

REPORT AND RECOMMENDATION

MICHELLE SMITH,

Respondent.

---

Petitioner Paris Dajon Allen, a state prisoner, commenced this action by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 alleging that his term of incarceration has been extended due to the unlawful actions of prison employees. In an order dated April 7, 2015, this Court noted that it did not appear from the face of Allen's habeas petition that he had exhausted available remedies for his claims in state court. *See* 28 U.S.C. § 2254(b)-(c). This Court therefore ordered Allen to file an affidavit providing a comprehensive explanation of how the exhaustion requirement had been satisfied. *See* ECF No. 3 at 2. Allen was given until April 30, 2015 to file this affidavit, failing which this Court would recommend that his habeas petition be dismissed without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

That deadline has now passed, and Allen has not yet filed the required affidavit or otherwise explained how he has satisfied the exhaustion requirement. In fact, Allen has not communicated with the Court about this case at all since commencing this action. Accordingly, this Court now recommends, in accordance with its prior order, that Allen's habeas petition be denied without prejudice under Rule 41(b) for failure to prosecute. *See Henderson v.*

*Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per curiam) ("A district

court has discretion to dismiss an action under Rule 41(b) for a plaintiff's failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.").

#### RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS  
HEREBY RECOMMENDED THAT:

1. Petitioner Paris Dajon Allen's petition for a writ of habeas corpus [ECF No. 3] be  
DENIED WITHOUT PREJUDICE.
2. Allen's application to proceed *in forma pauperis* [ECF No. 4] be DENIED AS  
MOOT.

Dated: May 5, 2015

s/ Jeffrey J. Keyes

JEFFREY J. KEYES

United States Magistrate Judge

#### NOTICE

**Filing Objections:** This Report and Recommendation is not an order or judgment of the District Court and is therefore, not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), "a party may file and serve specific written objections to a magistrate judge's proposed finding and recommendations within 14 days after being served a copy" of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set for in LR 72.2(c).

**Under Advisement Date:** This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.